



Attorney Docket Number XMP 2037
Serial Number 09/754,347

PATENT

#6
LP

IN THE UNITED STATE PATENT AND TRADEMARK OFFICE

In re application of: : Gelber, Daniel et al.
: :
For: : COMPOSITION AND METHOD FOR
: : TREATING THE EFFECTS OF
: : DISEASES AND MALADIES
: :
Serial No. : 09/754,347
: :
Filed : January 5, 2001
: :
Art Unit : 1651
: :
Examiner : Jean Witz
: :
Attorney Docket No. : XMP 2037

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RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Assistant Commissioner for Patents
Washington, DC 20231

Dear Sir:

Responsive to the Examiner,s Office Action dated August 13, 2002 requiring an election of species, the applicants, through their representatives, provisionally elect the combination of an antihistamine pharmaceutical (A) and an anti-inflammatory (I) as a nutraceutical. (This election is without traverse).

The examiner further requires election of a specific anti-inflammatory. The applicant provisionally elects stinging nettle and extracts thereof.

Since some of the claims under consideration include additional ingredients, the examiner further required election of a specific immune boosting nutraceutical and a specific anti-oxidant. The applicant provisionally elects zinc and effective salts thereof as an immune booster and ascorbic acid and effective salts thereof as anti-oxidants.

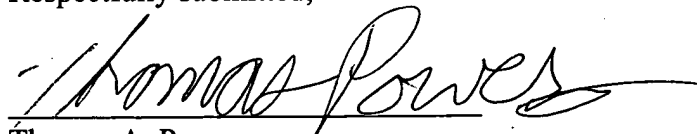
The combination of an antihistamine pharmaceutical (A) and an anti-inflammatory (I) as a nutraceutical is covered by Claims 1-6, 8, 14, 16, 30, 31, 50- 59, 61, 67, 69, 83, 84, and 104-106. Of these claims, Claims 1-6 and 54-59 are generic.

The following claims cover the combination of an antihistamine, an immune-boosting nutraceutical, and an anti-inflammatory: 14, 16, 67, and 69. The following claims cover the combination of an antihistamine, an anti-oxidant nutraceutical, and an anti-inflammatory: 30, 31, 83, and 84. Because the applicant has already elected a specific immune boosting nutraceutical and a specific anti-oxidant, as required by the examiner, it is requested that Claims 14, 16, 30, 31, 67, 69, 83, and 84 be included in the elected group.

In the alternative, should the examiner not find this argument convincing, the applicant, through his representatives, elects the combination of an antihistamine pharmaceutical (A) and an anti-inflammatory (I) as a nutraceutical, covered by Claims 1-6, 8, 50- 59, 61, and 104-106.

Please note that the examiner included Claims 50-53 and 104-106 as covering A+I. Claims 8 and 61 have been added to this list on the grounds that they cover the combination of a pharmaceutical and a generic nutraceutical. The examiner asserted that Claims 4-5 and 57-58 cover species A+B and A+O, but not species A+I; however, as these claims do not exclude the presence of an anti-inflammatory agent, it is the applicant's contention that they should be treated as generic claims.

Respectfully submitted,

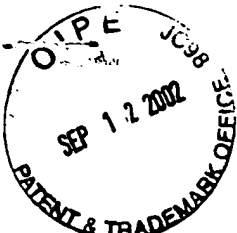


Thomas A. Powers
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Dated: September 12, 2002

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| TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i> | Applicati n Num b r | 09/754,347 |
| | Filing Dat | January 5, 2001 |
| | First Named Inventor | Daniel Gelber |
| | Group Art Unit | 1651 |
| | Examiner Name | Jean Witz |
| Total Number of Pages in This Submission | 3 | Attorney Docket Number XMP 2037 |

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|---|-----------------------------------|
| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT | |
| Firm or Individual name | Thomas A. Powers, Reg. No. 38,582 |
| Signature | |
| Date | September 12, 2002 |

| CERTIFICATE OF MAILING | |
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